



Department of Planning, Housing, & Community Development

Mayor, Richard C. David
Director, Jennie Skeadas-Sherry

STAFF REPORT

TO: Zoning Board of Appeals Members
FROM: Planning Housing and Community Development
DATE: June 27, 2014
SUBJECT: 197-203 Court Street and 40-46 Pine Street; Special Use Permit / Series A Site Plan Review
TAX ID #: 160.34-2-34, 160.34-2-35, 160.34-2-36, 160.34-2-37, 160.34-2-13, 160.34-2-14, 160.34-2-15, 160.34-2-16
CASE: 2014-17

A. REVIEW REQUESTED

The project applicant has submitted a proposal to the Veteran's Affairs Administration (VA) for the reuse of the old Sheltered Workshop building (203 State Street) for use as a Medical Treatment Center (classified in the City of Binghamton Zoning Code as "Clinic, Medical, Diagnostic or Treatment Center). The subject building is two-stories and 18,393 square feet. The renovated building would contain 15 treatment rooms, office space, a conference room and waiting areas.

As part of the proposal to the VA, the site must accommodate parking for at least 100 vehicles. The proposal therefore includes the demolition of 42 Pine Street and 197 and 199 Court Street with the intent of demolishing the existing structures and merging these parcels into 203 Court Street for the purposes of providing parking.

The subject parcels are located in the C-1 Service Commercial District and the R-2 One and Two Family Dwelling District. A Use Variance is required for the portion of the project located within the R-2 District.

A Use Variance to allow the parking area for the Clinic to be located in the R-2 Zone is required.

In granting a use variance, the Zoning Board of Appeals must find the applicant has adequately demonstrated the following:

- (a). **Economic deprivation**: That under applicable zoning regulations, the applicant is deprived of all economic use or benefit from the property in question. Deprivation must be established by competent financial evidence;
- (b). **Unique circumstances**: That the alleged hardship for the property is unique and does not apply to a substantial portion of the district or neighborhood;
- (c). **Neighborhood character**: That granting the variance will be in harmony with the spirit and intent of this ordinance and will not alter the essential character or quality of the neighborhood, endanger public health or safety, or substantially diminish or impair property values in the neighborhood.

- (d). **Self-created hardship**: That the alleged hardship has not been self-created.

The Zoning Board of Appeals, in granting a use variance, shall grant the minimum variance that it shall deem necessary and adequate, and at the same time preserve and protect the character of the neighborhood and the health, safety, and welfare of the community.

The following area variances are also required:

	Proposed	Required
Lot coverage (C-4)	90%	70%
Lot coverage (R-2)	90%	50%
Parking Maximum	100	42 maximum
Interior Landscaping	1,831 square feet	1,916 square feet
Interior Trees	6 trees	15 trees
Tree Canopy Coverage	0%	50%
Parking Buffer	0 feet along the west property line	5 feet

In granting an area variance, the Zoning Board of Appeals must weigh the benefit to the applicant if the variance is granted against the detriment to the health, safety, and welfare of the neighborhood or community by such a grant. The following must also be considered:

- (a). **Undesirable change**: Whether an undesirable change will be produced in the character of the neighborhood, or whether a detriment to nearby properties will be created;
- (b). **Reasonable alternative**: Whether the Applicant can achieve his goals via a reasonable alternative that does not involve the necessity of an area variance;
- (c). **Substantial request**: Whether the variance requested is substantial;
- (d). **Physical and Environmental Conditions**: Whether the requested variance will have an adverse impact on the physical or environmental conditions in the neighborhood or district;
- (e). **Self-created hardship**: Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Zoning Board of Appeals, but shall not necessarily preclude the granting of the area variance.

The Zoning Board of Appeals, in granting an area variance, shall grant the minimum variance that it shall deem necessary and adequate, and at the same time preserve and protect the character of the neighborhood and the health, safety, and welfare of the community.

B. ADDITIONAL REVIEWS

Series A Site Plan Approval and a Special Use Permit is required from the Planning Commission.

A Stormwater Pollution Prevention Plan must be submitted for review and approval to the Engineering Department prior to the issuance of a building permit.

Since the project would require alterations to existing curb opens, the plans have been routed to the Traffic Board.

C. PREVIOUS ZONING BOARD & PLANNING COMMISSION ACTIVITY

206 Robinson Street – On August 29, 2014 a Determination of No Historical Significance from the Commission on Architecture and Urban Design (CAUD) was issued to allow the demolition of a residential building located on the site.

278 Robinson Street – On March 19, 2008 the Planning Commission approved a Special Use Permit, Series A Site Plan Review, to build a 1260 square foot addition to the existing Lourdes Primary Care and Walk-In in a C-4, Neighborhood Commercial District

D. ENVIRONMENTAL IMPACT

The applicant's proposal is a SEQR **Unlisted** Action. The Zoning Board should be the lead agency to determine any environmental significance related to the use and area variances.

1. Motion to determine what type of action:
 - a. Type I
 - b. Type II
 - c. **Unlisted**
2. Determine Lead Agency and other involved agencies.
3. After the Public Hearing, Determination of Significance. The Zoning Board of Appeals is responsible for completing Part 2 & Part 3 of the Environmental Assessment Form (EAF) – see below.

SEQR EAF Part 2 - Impact Assessment. The Lead Agency (ZBA) is responsible for the completion of Part 2. Answer all of the following questions in Part 2 using the information contained in Part 1 and other materials submitted by the project sponsor or otherwise available to the ZBA. When answering the questions the ZBA should be guided by the concept “Have our responses been reasonable considering the scale and context of the proposed action?”

	NO, OR SMALL IMPACT MAY OCCUR	MODERATE TO LARGE IMPACT MAY OCCUR
Will the proposed action create a material conflict with an adopted land use plan or zoning regulations?		
Will the proposed action result in a change in the use or intensity of use of land?		
Will the proposed action impair the character or quality of the existing community?		
Will the proposed action have an impact on the environmental characteristics that caused the establishment of a Critical Environmental Area (CEA)?		
Will the proposed action result in an adverse change in the existing level of traffic or affect existing infrastructure for mass transit, biking or walkway?		

Will the proposed action cause an increase in the use of energy and it fails to incorporate reasonably available energy conservation or renewable energy opportunities?		
Will the proposed action impact existing: A. public / private water supplies? B. public / private wastewater treatment utilities?		
Will the proposed action impair the character or quality of important historic, archaeological, architectural or aesthetic resources?		
Will the proposed action result in an adverse change to natural resources (e.g., wetlands, waterbodies, groundwater, air quality, flora and fauna)?		
Will the proposed action result in an increase in the potential for erosion, flooding or drainage Problems?		
Will the proposed action create a hazard to environmental resources or human health?		

EAF Part 3 - Determination of significance. For every question in Part 2 that answered “moderate to large impact may occur”, or if there is a need to explain why a particular element of the proposed action may or will not result in a significant adverse environmental impact, please complete Part 3. Part 3 should, in sufficient detail, identify the impact, including any measures or design elements that have been included by the project sponsor to avoid or reduce impacts. Part 3 should also explain how the lead agency determined that the impact may or will not be significant. Each potential impact should be assessed considering its setting, probability of occurring, duration, irreversibility, geographic scope and magnitude. Also consider the potential for short-term, long-term and cumulative impacts.

- If the ZBA determines that the proposed action may result in one or more potentially large or significant adverse impacts an environmental impact statement is required.
- The ZBA may issue a Negative Declaration if it is determined that the proposed action will not result in any significant adverse environmental impacts.

E. REQUIRED FINDINGS

The Zoning Board of Appeals must address how the requested variances meet the following findings. The Board may consider and incorporate the findings provided by the applicant (see attached Planning and Zoning Application).

Use Variance Findings: Section 410.92C of the Zoning Code states that the Zoning Board of Appeals shall not grant a use variance until the applicant has shown that the applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship, the applicant must demonstrate the following to the Zoning Board of Appeals:

(a) Reasonable return: the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence.

(b) Unique hardship: the alleged hardship for the property is unique and does not apply to a substantial portion of the district or neighborhood.

(c) Essential character of the neighborhood: granting the variance will not alter the essential character of the neighborhood.

(d) Not self-created hardship: the alleged hardship has not been self-created.

Area Variance Findings: Section 410.92D states that where there are practical difficulties or special conditions which make regulations governing lot size, yard size, building height, solar access or any other regulations pertaining to bulk and not specifically related to use of land or buildings unreasonable or impossible to comply with, the Zoning Board of Appeals may vary or modify these regulations as long as the spirit of the regulation to be altered is observed. In making its determination, the Zoning Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted as weighed against the detriment to the health, safety, and welfare of the neighborhood or community by such grant. In making such determination the Board shall consider:

(a) Undesirable change in neighborhood character: whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance(s).

(b) Alternative cure sought: whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance(s);

(c) Substantiality: whether the area variance(s) requested is substantial;

(d) Adverse effect or impact: whether the requested variance(s) will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;

(e) Not self-created: whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Zoning Board of Appeals, but shall not necessarily preclude the granting of the area variance(s).

I. SUGGESTED CONDITIONS

If the Zoning Board of Appeals approves this project, Staff recommends that the following condition of approval be included:

1. A Stormwater Pollution Prevention Plan shall be submitted with the building permit application for this project. The SWPPP shall be review and approved by the Stormwater Officer prior to the issuance of the building permit.
2. A Landscape Plan illustrating a combination of trees, shrubs, vegetative ground cover, grasses, and, to less extent, mulch, to be planted within the proposed buffer strips shall be submitted to the Planning Commission for review and approval. The Plan shall include size, species and location of all plant materials so chosen as to form year-round dense screen at least four feet high within two years the initial planting (except as provided in 410.17). All plant materials shall be climate appropriate, preferable native species, and salt and drought tolerant.

J. ENCLOSURES

Enclosed is a copy of the site plan, site photographs and application.